

CCRB INVESTIGATIVE RECOMMENDATION

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|--|---|-------------------------------------|---|------------------------------------|---------------------------------|
| Investigator: Patrick Browne | Team: Squad #8 | CCRB Case #: 201504856 | <input type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Tuesday, 05/12/2015 4:44 PM | Location of Incident: Stanley Avenue between Ashford Street and Schenck Avenue | Precinct: 75 | 18 Mo. SOL 11/12/2016 | EO SOL 11/12/2016 | |
| Date/Time CV Reported Mon, 06/15/2015 3:32 PM | CV Reported At: CCRB | How CV Reported: On-line website | Date/Time Received at CCRB Mon, 06/15/2015 3:32 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |
| | | |

| Witness(es) | Home Address |
|-------------|--------------|
| | |

| Subject Officer(s) | Shield | TaxID | Command |
|--------------------|--------|--------|---------|
| 1. SGT Shibu Madhu | 04772 | 944754 | PBBN |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-------------------------|-----------|--------|----------|
| 1. POM Vincent Gambino | 31824 | 954841 | PBBN |
| 2. POM Mahmudul Bhuiyan | 19636 | 953682 | 075 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|---|-----------------------------|
| A.SGT Shibu Madhu | Abuse: Sergeant Shibu Madhu searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. | |
| B.SGT Shibu Madhu | Abuse: Sergeant Shibu Madhu frisked § 87(2)(b) | |
| § 87(4-b), § 87(2)(g) | | |

Case Summary

There is no video footage associated with this incident. At approximately 4:55 p.m. on May 12, 2015, § 87(2)(b) and § 87(2)(b) (no relation) were sitting in § 87(2)(b) car on Stanley Avenue between Ashford Street and Schenck Street in Brooklyn. § 87(2)(b) was in the driver's seat while § 87(2)(b) was in the passenger's seat. After several minutes of conversation during which § 87(2)(b) was drinking from a glass bottle, three officers identified as Sgt. Shibu Madhu and PO Vincent Gambino of Patrol Borough Brooklyn North, as well as PO Mahmudul Bhuiyan of the 75th Precinct, approached on foot. Sgt. Madhu allegedly questioned § 87(2)(b) about his activities and asked about bottles that were on the floor, one of which was a glass bottle of Budweiser beer. Without asking for permission, Sgt. Madhu allegedly opened the passenger's side door and inserted his torso across § 87(2)(b) lap before grabbing the beer bottle and examining it (**Allegation A**).

Without removing the bottle from the car or inspecting any other areas, Sgt. Madhu allegedly requested that both § 87(2)(b) and § 87(2)(b) provide identification, which they did. However, Sgt. Madhu simultaneously instructed them to exit the vehicle, prompting § 87(2)(b) to get out and stand to the side. § 87(2)(b) stated that he could not because he is handicapped and wheelchair bound, so he remained in the car. On the passenger's side, Sgt. Madhu allegedly then frisked § 87(2)(b) entire body (**Allegation B**), though no items were recovered. The officers then returned to their vehicle and completed two summonses, one for § 87(2)(b) and one for § 87(2)(b). Both summonses were for the same violation of § 87(2)(b) with PO Gambino issuing one and PO Bhuiyan issuing the other. § 87(2)(g)

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) originally chose for this complaint to be mediated. However, after appearing for the mediation on November 16, 2015, he § 87(2)(b) demanded that the CCRB investigate the complaint.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

- As of December 4, 2015, no notice of claim associated with this incident has been filed with the City of New York (see Board Review #1).

Civilian and Officer CCRB Histories

- Sgt. Madhu has been a member of the NYPD for eight years and has been a subject in eleven prior CCRB cases involving nineteen allegations (see Board Review #2). Three of these allegations have been substantiated against him, one for the use of force and the other two for unjustified entries of premises. The NYPD was Unable to Prosecute the force and one entry allegation, but Sgt. Madhu received formalized training for the second entry allegation in March of 2015. The majority of his remaining allegations are for force and discourtesies, which are unrelated to this case.
- This is the first CCRB complaint filed by § 87(2)(b) (see Board Review #3).

Potential Issues

During an initial telephone call on June 23, 2015, § 87(2)(b) scheduled his sworn statement for June 24, 2015. On the day of the appointment, he called in advance and rescheduled for June 26, 2015, though he failed to appear without calling in advance to cancel or reschedule. On June 26, 2015, a missed appointment letter—which has not been returned to the CCRB via the United States Postal Service—was mailed to him. During a follow up telephone conversation the same day, § 87(2)(b) rescheduled his appointment for July 6, 2015, though he again failed to appear without calling in advance to cancel or reschedule. In light of these circumstances, the CCRB was unable to obtain a statement from § 87(2)(b).

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) stated (see Board Reviews #4 and #5) that two uniformed male officers approached his vehicle and conducted the stop, describing one as a 35 to 40-year-old dark skinned Indian male named “Gambino” who stood 5’7” to 5’8” and weighed 180 to 190 pounds, and the other as a light-skinned Hispanic male in his late 20’s to early 30’s named “Bhuiyan” who stood 5’5” to 5’6” and weighed 170 pounds. § 87(2)(b) obtained the aforementioned names from the summonses that were separately issued to him (see Board Review #6) and § 87(2)(b) (see Board Review #7), which he claimed to have seen them writing while in their vehicle together. He stated that it was PO Bhuiyan who questioned § 87(2)(b) entered the vehicle to examine the bottle, and frisked § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

However, upon arrival at the mediation session, § 87(2)(b) stated § 87(2)(b) his original description of the officers but adding that a third officer whom he could not describe did stop by during the incident only for a few seconds before departing after officers told him everything was under control. During subsequent interviews with PO Bhuiyan and PO Gambino, it was determined that they were not working together at the time of the incident, but that PO Bhuiyan was instead partnered with Sgt. Madhu—a § 87(2)(b) old dark-skinned South Asian male who stands 5’10” and weighs 210 pounds.

§ 87(2)(g)

Allegation A—Abuse of Authority: Sergeant Shibu Madhu searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(b) maintained that he and § 87(2)(b) were sitting inside his vehicle parked on the side of the street talking for as long as twenty minutes before officers approached. He stated that § 87(2)(b) was holding a glass Snapple or iced tea bottle half filled with brown liquid, from which he took several sips throughout the conversation and which he placed on the floor between the two front seats while not drinking (there was no center console). § 87(2)(b) acknowledged that on the floor in between the seats were three additional empty bottles intended for recycling, including a 16-ounce brown glass Budweiser bottle. § 87(2)(b) denied that either he or § 87(2)(b) had consumed any alcohol that day and stated that because it was on the floor, the beer bottle would not have been visible to anyone standing outside the car. Nevertheless, § 87(2)(b) stated that upon approach, St. Madhu asked § 87(2)(b) what he was doing, to which § 87(2)(b) asked him what he meant. § 87(2)(b) maintained that Sgt. Madhu replied that he had seen him place something on the floor, at which point § 87(2)(b) held up his Snapple/iced tea and claimed to have picked it up. § 87(2)(b) stated that § 87(2)(b) further explained to Sgt. Madhu that he had simultaneously pushed a beer bottle out of the way, prompting Sgt. Madhu to ask what bottle he was referencing. § 87(2)(b) alleged that without asking permission or obtaining either his or § 87(2)(b) consent, Sgt. Madhu opened the passenger's side door, inserted his torso across § 87(2)(b) lap, reached down in between the seats, and picked up the empty beer bottle. § 87(2)(b) stated that Sgt. Madhu held the bottle up and examined it, but subsequently placed it back down and exited the car without looking in any other areas. Although attempts were made to obtain a statement from § 87(2)(b) the investigation was unable to do so (see Potential Issues section).

Neither PO Gambino (see Board Review #8) nor Sgt. Madhu (see Board Review #9) had any recollection of § 87(2)(b) or this incident. PO Bhuiyan (see Board Review #10) stated that while he and Sgt. Madhu were conducting patrol, he observed § 87(2)(b) holding an open 22-ounce Budweiser-labeled glass bottle, though he did not recall if he observed § 87(2)(b) drink from the bottle. PO Bhuiyan maintained that he then approached the vehicle with the intention of issuing a summons for open container. PO Bhuiyan further claimed that as he approached the car, he observed § 87(2)(b) place the bottle onto the floor. PO Bhuiyan did not recall what specifically he said to § 87(2)(b) at the vehicle, but believed that he asked him to show the bottle that he had placed down. PO Bhuiyan believed that § 87(2)(b) complied by picking the bottle up and showing it to him, though he did not recall if he ever handled the bottle himself or if he ever extended his hand into the vehicle to retrieve it. However, PO Bhuiyan denied inserting his body into the vehicle, searching the vehicle, or seeing any other officer search the vehicle. PO Bhuiyan stated that at some point while standing next to the vehicle, he smelled an odor of beer. PO Bhuiyan did not recall any other officers, such as PO Gambino, being at the scene and did not

know why or how § 87(2)(b) was summonsed. PO Bhuiyan did not recall what role Sgt. Madhu played at the scene or if he ever interacted with any civilians.

The drinking of alcoholic beverages, or possession of an open container containing an alcoholic beverage, in a motor vehicle located on a public highway is prohibited. Vehicle and Traffic Law §1227 (see Board Review #11). It has been established that an odor of alcohol in conjunction with an observed container of alcohol inside the vehicle provides sufficient probable cause to suspect a violation of Vehicle and Traffic Law §1227, justifying a search of the vehicle. People v. Brooks, 23 A.D.3d 847 (3rd Dept. 2005) (see Board Review #12).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Allegation B—Abuse of Authority: Sergeant Shibu Madhu frisked § 87(2)(b)

§ 87(2)(g)

[REDACTED]

§ 87(2)(g), § 87(4-b)

[REDACTED]

§ 87(2)(g), § 87(4-b) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted].

Squad: __

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| Investigator: | _____ | _____ | _____ |
| | Signature | Print | Date |
| Squad Leader: | _____ | _____ | _____ |
| | Title/Signature | Print | Date |
| Reviewer: | _____ | _____ | _____ |
| | Title/Signature | Print | Date |